IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2007

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THE HONOURABLE MR.JUSTICE K.CHANDRU

Writ Petition No.20462 of 2007

Dr.T.Muthukrishnan .. Petitioner

Vs.

The Special Commissioner,
Indian System of Medicine & Homeopathy,
Office of the Commissioner,
Arignar Anna Hospital Campus,
Arumbakkam, Chennai-600 106. .. Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the respondent in Ref.No.17248/E2/1/2006 dated 27.4.2007 and quash the proceedings of the respondent dated 27.4.2007.

For Petitioner : Mr.M.Muthugeethayan

For Respondent : Mr.Pa.Kadirvel,
Govt. Advocate

O R D E R

The petitioner is an Assistant Medical Officer at Govt. Siddha Hospital, Govt. Head Quarters Hospital, Erode. There were complaints received against the petitioner which necessitated his transfer from out of the said Hospital to the Government Primary Health Centre at Thonari, The Nilgiris. The petitioner was given relieving order on 04.04.2006 based upon the Transfer Order dated 29.03.2006. The petitioner filed a writ petition in W.P.No.11328 of 2006. After notice to the respondents, the said writ petition was allowed by this Court by order dated 24.04.2006. The operative portion of the order is found in paragraph-3, which is as follows:-

> "3. A plain reading of the impugned order shows that the petitioner has been transferred only on the ground of complaints and strong resentment of staff in the dispensary / hospital.

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In fact, the impugned order refers to several complaints alleging personal misbehaviour and conduct inappropriate to decorum and orderly functioning of a public service dispensary. In my opinion, the impugned order is punitive in nature and cannot be sustained in the eye of law. Hence, the impugned order is set aside and the Writ Petition is allowed. However, this order shall not stand in the way of the respondent to proceed with the enquiry against the petitioner in accordance with law. No costs. Consequently, W.P.M.P.No.12879 of 2006 is closed."

This court, while quashing the transfer order, gave liberty to the respondent to take action for any complaints of specific case of misbehaviour. Far from taking any action in terms of the liberty granted by this Court, the respondent framed a charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, wherein the following three allegations were made against the petitioner:-

"Lapse No.-1

"The said Dr.T.Muthukrishnan while working at the said Siddha Wing was transferred to Government Primary Health Centre, Thooneri, The Nilgiris District vide the order reference no.3742/E1/2/2006 dated 29.03.2006 of the undersigned. But the said Dr.T.Muthukrishnan, Assistant Medical Officer [Siddha] did not join duty at the new place. Thus he has disobeyed the orders of his superior and acted in a manner of unbecoming of a Government Servant."

Lapse No.-2

"The said Dr.T.Muthukrishnan, while working at the said Siddha Wing has refused to receive the transfer orders read in lapse no.1 above and the relieving order under reference no.300/E/2006 dated 04.04.2006 of the District Siddha Medical Officer, Erode. His refusal to receive the said two orders when he was asked to receive them clearly shows his insubordination which is against the Tamil Nadu Government Servants' Conduct Rules 1973."

Lapse No.-3

"The said Dr.T.Muthukrishnan, Assistant Medical Officer [Siddha], consequent on his transfer to The Nilgiris District was relieved of

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his duties at the above said place by the District Siddha Medical Officer, Erode on 04.04.2006. He refused to receive the orders despite instructions from the District Siddha Medical Officer, Erode & instead applied for Medical Leave for 30 days with effect from 04.04.2006. The District Siddha Medical Officer, Erode has referred him to Medical Board at Namakkal for a second medical opinion. The Chairman, Medical Board, Namakkal directed him to appear before the Medical Board on 20.04.2006. But the said Dr.T.Muthukrishnan, Assistant Medical Officer [Siddha] did not appear before the board. Therefore, he has been recalcitrant to the orders of his superiors and acted in a manner of unbecoming of a Government Servant."

These three allegations were described as lapses. After getting explanation from the petitioner, by the impugned order dated 27.04.2007, punishment of stoppage of next increment for one year without cumulative effect was ordered against the petitioner, even though an appeal lies against the said order to the Government. Hence the petitioner has chosen to file the present writ petition.

2. Heard the arguments of Mr.M.Muthugeethayan, learned counsel appearing for the petitioner and Mr.Pa.Kadirvel, learned Govt. Advocate appearing for the respondent and perused the records. The original transfer was based upon complaints received against the petitioner for his misbehaviour and misconduct and therefore this Court was forced to quash the charge memo. Since no transfer can be made as a measure of punishment or to avoid disciplinary action, this Court also gave a liberty to the respondent to take action on the basis of complaints received against the petitioner. Far from taking any action on the basis of those complaints which were disclosed in the memorandum dated 29.03.2006, the respondent has framed charges against the petitioner contending that the petitioner has disobeyed the orders of his superior and that the petitioner has refused to receive the transfer order. This action of the respondent is contumacious as it amounts to non-compliance of the order passed by this Court in W.P.No.11328 of 2006 dated 24.04.2006. When the transfer order is held to be illegal, there is no question of the respondent framing charges in respect of the very same transfer order not being either obeyed or not being received by the petitioner. In fact, the petitioner has successfully challenged the said transfer order before this Court and this Court refrained from taking any serious action on the respondent even though their action is highly reprehensible.

3. Under the circumstances, the issuance of notice under Rule

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17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and the punishment found in the impugned order is set aside and the writ petition stands allowed. Consequently, M.P.No.1 of 2007 is closed. No costs. However, if still the respondent feels that there are serious complaints against the petitioner, taking advantage of the liberty given by this Court on the earlier occasion, it is open to the respondent to proceed in respect of those complaints.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Special Commissioner,
Indian System of Medicine & Homeopathy,
Office of the Commissioner,
Arignar Anna Hospital Campus,
Arumbakkam, Chennai-600 106.

+1cc to M/s. V.Ramajegadeesan, Advocate Sr 64172
+1cc to Govt. Pleader Sr 64122

AKR (CO)
km/31.10.

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